

JUDGE DOUGLAS McBROOM

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

LUMMI INDIAN NATION, MAKAH
INDIAN TRIBE, QUILEUTE INDIAN
TRIBE, QUINULT INDIAN
NATION, SQUAXIN ISLAND
INDIAN TRIBE, SUQUAMISH
INDIAN TRIBE, and the TULALIP
TRIBES, federally recognized Indian
tribes,

Plaintiffs,

v.

STATE OF WASHINGTON;
CHRISTINE GREGOIRE, Governor of
the State of Washington;
WASHINGTON DEPARTMENT OF
ECOLOGY; JAY MANNING, Director
of the Washington Department of
Ecology; WASHINGTON
DEPARTMENT OF HEALTH; and
MARY SELECKY, Secretary of Health
for the State of Washington,

Defendants.

NO. 06-2-40103-4SEA

ANSWER OF DEFENDANTS TO
PLAINTIFFS' SUMMONS AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

Defendants State of Washington, Christine Gregoire, Governor, State Department of
Ecology, Jay Manning, Director of the Department of Ecology, State Department of Health,
and Mary Selecky, Secretary of the Department of Health (collectively "Defendants"),

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ANSWER OF DEFENDANTS TO
PLAINTIFFS' SUMMONS AND
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

1

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1 through their attorneys, Alan M. Reichman, Mark H. Calkins and Stephen H. North, Assistant
2 Attorneys General, in answer to Plaintiffs' Complaint, admit, deny, and allege as follows:

3 Under Civil Rule (CR) 8, Defendants generally deny each and every allegation of the
4 Complaint not expressly admitted. Defendants also expressly deny some allegations without
5 affecting their general denial of other allegations. Defendants will not respond to allegations that
6 present purely legal conclusions or arguments. If an answer to any such allegation is required,
7 Defendants deny each such allegation that is not expressly admitted. To the extent that
8 Defendants incorporate Plaintiffs' headings in this answer, Defendants do so for organizational
9 purposes only and do not admit any of the allegations contained in Plaintiffs' headings.

10 In addition to the above general responses, Defendants offer the following responses to the
11 specific allegations set forth in each numbered paragraph of Plaintiffs' Complaint.

12 STATEMENT OF THE CASE

13 1. Defendants admit the first sentence of paragraph 1. Defendants deny the
14 remainder of paragraph 1. Insofar as any of this paragraph sets forth legal conclusions or
15 argument, no response is required.

16 JURISDICTION

17 2. Defendants admit jurisdiction is proper pursuant to RCW 7.24.010. Defendants
18 deny this Court has jurisdiction over this matter under RCW 7.24.030. Defendants are without
19 knowledge or information sufficient to form a belief as to the truth of the allegations in sentence 2
20 of this paragraph pertaining to venue. Insofar as any of this paragraph sets forth legal conclusions
21 or argument, no response is required.

22 PARTIES

23 3. Defendants admit the first sentence of paragraph 3. Defendants are without
24 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
25 paragraph 3.

26 4. Deny.

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in sentence 1 of this paragraph. Defendants admit the remainder of this paragraph.

6. Admit.

7. Admit.

8. Admit.

9. Admit.

10. Admit.

11. Admit.

STATEMENT OF FACTS

I. Washington Water Law Principles

12. Admit. The use and appropriation of water is also governed by provisions in or pursuant to chapters 43.20, 70.116, 70.119, and 70.119A RCW.

13. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

14. Deny.

15. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

16. Admit. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

17. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

18. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

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1 **II. Changes to Washington Water Law Made by SSHB 1338.**

2 19. Defendants admit the first and second sentences of paragraph 19. Defendants
3 deny the third sentence. Insofar as any of this paragraph sets forth legal conclusions or argument,
4 no response is required.

5 **A. Elimination of Beneficial Use Requirement.**

6 20. Deny.

7 21. Defendants admit the first sentence of paragraph 21. Defendants deny the second
8 sentence .

9 22. Deny. Insofar as any of this paragraph sets forth legal conclusions or argument, no
10 response is required.

11 **B. Retroactive Exemptions from Relinquishment.**

12 23. Deny. Insofar as any of this paragraph sets forth legal conclusions or argument, no
13 response is required.

14 24. Deny. Insofar as any of this paragraph sets forth legal conclusions or argument, no
15 response is required.

16 25. Admit.

17 26. Admit. Insofar as any of this paragraph sets forth legal conclusions or argument,
18 no response is required. The paragraph's summary of RCW 90.03.560 is incomplete; the statute
19 speaks for itself.

20 27. Deny.

21 **C. Changes in the Place of Use.**

22 28. Deny. Insofar as any of this paragraph sets forth legal conclusions or argument, no
23 response is required.

24 29. Defendants admit this paragraph but note that plaintiffs have submitted an
25 incomplete quotation of RCW 90.03.386(2).

26 ///

1 30. Deny. Insofar as any of this paragraph sets forth legal conclusions or argument, no
2 response is required.

3 31. Insofar as this paragraph sets forth legal conclusions or argument, no response is
4 required.

5 32. Insofar as this paragraph sets forth legal conclusions or argument, no response is
6 required.

7 **D. Changes in Population Served and Number of Service Connections.**

8 33. Insofar as this paragraph sets forth legal conclusions or argument, no response is
9 required.

10 34. Insofar as this paragraph sets forth legal conclusions or argument, no response is
11 required.

12 35. Insofar as this paragraph sets forth legal conclusions or argument, no response is
13 required.

14 **III. The Changes to Washington Water Law Made by SSHB 3338 Will Impair the**
15 **Tribes' Rights and Interests.**

16 36. Defendants are without knowledge or information sufficient to form a belief as to
17 the truth of the allegations in paragraph 36.

18 37. Admit.

19 38. Defendants are without knowledge or information sufficient to form a belief as to
20 the truth of the allegations in paragraph 38.

21 39. Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations in paragraph 39.

23 40. Admit.

24 41. Defendants are without knowledge or information sufficient to form a belief as to
25 the truth of the allegations in the first and third sentences of paragraph 41. Defendants admit the
26 second sentence of paragraph 41.

42. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first, second, and third sentences in paragraph 42. Regarding the fourth sentence, Defendants admit that the first two quoted statutory excerpts come from RCW 77.95.010 and that the third quoted excerpt comes from RCW 77.85.005. Plaintiffs deny that any quoted excerpt comes from RCW 77.110.010.

43. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.

44. Deny.

45. Deny.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46.

47. Deny. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

48. Deny. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

CAUSES OF ACTION

First Cause of Action

(Elimination of Beneficial Use Requirement)

49. Defendants incorporate by reference Defendants' answers to paragraphs 1 through 48.

50. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

51. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

52. Deny.

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53. Deny. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

54. Deny.

55. Defendants admit the first sentence of paragraph 55. Insofar as the second sentence of paragraph 55 sets forth legal conclusions or argument, no response is required. Defendants deny the third sentence of paragraph 55.

Second Cause of Action

(Retroactive Exemptions from Relinquishment)

56. Defendants incorporate by reference Defendants' answers to paragraphs 1 through 55.

57. Admit.

58. Deny.

59. Deny.

Third Cause of Action

(Changes in Place of Use)

60. Defendants incorporate by reference Defendants' answers to paragraphs 1 through 59.

61. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

62. Defendants deny the first sentence of paragraph 62. Insofar as the last two sentences of this paragraph set forth legal conclusions or argument, no response is required.

63. Insofar as this paragraph sets forth legal conclusions or argument, no response is required.

64. Deny.

65. Deny.

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1 **Fourth Cause of Action**

2 **(Changes in Population Served and Number of Service Connections)**

3 66. Defendants incorporate by reference Defendants' answers to paragraphs 1 through

4 65.

5 67. Defendants deny the first sentence of paragraph 67. Insofar as the last sentence of
6 this paragraph sets forth legal conclusions or argument, no response is required.

7 68. Insofar as this paragraph sets forth legal conclusions or argument, no response is
8 required.

9 69. Deny.

10 70. Deny.

11 **REQUEST FOR RELIEF**

12 A. Defendants deny that Plaintiffs are entitled to any relief requested in this section,
13 paragraphs A through D.

14 **AFFIRMATIVE DEFENSES**

15 By way of further answer and affirmative defenses, Defendants allege that:

16 A. Plaintiffs have failed to state a claim upon which relief can be granted.

17 B. Plaintiffs' claims are not ripe and/or justiciable. This case is not presently fit for
18 review.

19 C. Defendants reserve the right to supplement these affirmative defenses as new
20 defenses may be revealed during the course of discovery.

21 WHEREFORE, Defendants request an order:

22 1. Dismissing this action with prejudice;

23 2. Denying Plaintiffs' requested relief;

24 3. Granting Defendants their costs and reasonable attorneys' fees herein; and

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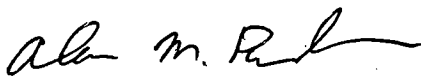
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1 4. Granting the Defendants such additional relief the court finds appropriate or just.


2 DATED this 10th day of January, 2007.

3 ROB McKENNA
4 Attorney General

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